



FILED

11/16/21
04:59 PM

C2111016

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Dennis Reis and Deborah Reis,

Complainants,

vs.

Sonoma Marin Area Rail Transit District,

Defendant.

(C).

Complaint
(Rule 4.2)

| COMPLAINANTS | DEFENDANT |
|---|--|
| Dennis Reis and Deborah Reis 4871 Petaluma Blvd S. Petaluma CA 94952 T: 707 480 5288 E-mail: dreis@reisranch.com | Sonoma Marin Area Rail Transit District Attn: Thomas Lyons, General Counsel 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 T: 707-794-3330 E-mail: tlyons@sonomamarintrain.org |
| ATTORNEYS FOR COMPLAINANTS | |
| Stewart, Wald & Mc Culley, LLC. Attn: Thomas S. Stewart, Esq. 2100 Central, Suite 22 Kansas City, Missouri 64108 T: 816-303-1500 E-mail 1: stewart@swm.legal E-mail 2: wald@swm.legal E-mail 3: mcculley@swm.legal E-mail 4: ripley@swm.legal | |

Kershaw, Cook & Talley PC.

Attn: Stuart C. Talley, Esq.

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Sacramento CA 95864

T: 916-779-7000

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

(A)

DENNIS REIS and DEBORAH REIS;

COMPLAINANT(S)

vs.

(B)

SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT ("SMART")

DEFENDANT(S)

(Include Utility "U-Number", if known)

(for Commission use only)

(C)

Have you tried to resolve this matter informally with
the Commission's Consumer Affairs staff?

☐ YES

☒ NO

See attached.

Has staff responded to your complaint?

☐ YES

☒ NO

See attached.

Did you appeal to the Consumer Affairs Manager?

☐ YES

☒ NO

Do you have money on deposit with the
Commission?

☐ YES

☒ NO

Amount \$ _____

Is your service now disconnected?

☐ YES

☒ NO

COMPLAINT

(D)

The complaint of (Provide name, address and phone number for each complainant)

| Name of Complainant(s) | Address | Daytime Phone Number |
|------------------------|--|----------------------|
| Dennis Reis | 4871 Petaluma Blvd S, Petaluma, CA 94952 | (707) 480-5288 |
| Deborah Reis | 4871 Petaluma Blvd S, Petaluma, CA 94952 | (707) 480-5288 |
| | | |

respectfully shows that:

(E)

Defendant(s) (Provide name, address and phone number for each defendant)

| Name of Defendant(s) | Address | Daytime Phone Number |
|-----------------------------------|---|----------------------|
| SMART | 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 | (707) 794-3275 |
| c/o Thomas Lyons, General Counsel | | |
| | | |

(F)

Explain fully and clearly the details of your complaint. (Attach additional pages if necessary and any supporting documentation)

See attached.

(G) Scoping Memo Information (Rule 4.2(a))

(1) The proposed category for the Complaint is (check one):

☒ adjudicatory (most complaints are adjudicatory unless they challenge the reasonableness of rates)

☐ ratesetting (check this box if your complaint challenges the reasonableness of a rates)

(2) Are hearings needed, (are there facts in dispute)? ☒ YES ☐ NO

(3) ☒ Regular Complaint ☐ Expedited Complaint

(4) The issues to be considered are (Example: The utility should refund the overbilled amount of \$78.00):

See attached.

- (5) The proposed schedule for resolving the complaint within 12 months (if categorized as adjudicatory) or 18 months (if categorized as ratesetting) is as follows:

Prehearing Conference: Approximately 30 to 40 days from the date of filing of the Complaint.

Hearing: Approximately 50 to 70 days from the date of filing of the Complaint.

| | |
|---|---------------------------|
| Prehearing Conference (Example: 6/1/09): | Monday, November 22, 2021 |
| Hearing (Example: 7/1/09) | Monday, December 13, 2021 |

Explain here if you propose a schedule different from the above guidelines.

N/A

(H)

Wherefore, complainant(s) request(s) an order. State clearly the exact relief desired. (Attach additional pages if necessary)

See attached.

(I)

OPTIONAL: I/we would like to receive the answer and other filings of the defendant(s) and information and notices from the Commission by electronic mail (e-mail). My/our e-mail address(es) is/are:

dreis@reisranch.com

(J)

Dated Petaluma, California, this 26 day of October, 2021
(City) (date) (month) (year)


Signature of each complainant

(MUST ALSO SIGN VERIFICATION AND PRIVACY NOTICE)

(K)**REPRESENTATIVE'S INFORMATION:**

Provide name, address, telephone number, e-mail address (if consents to notifications by e-mail), and signature of representative, if any.

| | |
|-------------------------|------------|
| Name of Representative: | See below. |
| Address: | |
| Telephone Number: | |
| E-mail: | |
| Signature | |

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Attorneys for Complainants

VERIFICATION
(For Individual or Partnerships)

I am (one of) the complainant(s) in the above-entitled matter; the statements in the foregoing document are true of my knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

(L)

Executed on October 26, 2014 at Petaluma, California
(date) (City)


(Complainant Signature)

VERIFICATION
(For a Corporation)

I am an officer of the complaining corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

(M)

Executed on _____, at _____, California
(date) (City)

Signature of Officer

Title

(N) NUMBER OF COPIES NEEDED FOR FILING:

If you are filing your formal complaint on paper, then submit one (1) original, six (6) copies, plus one (1) copy for each named defendant. For example, if your formal complaint has one defendant, then you must submit a total of eight (8) copies (Rule 4.2(b)).

If you are filing your formal complaint electronically (visit <http://www.cpuc.ca.gov/PUC/efiling> for additional details), then you are not required to mail paper copies.

(O) Mail paper copies to: California Public Utilities Commission
Attn: Docket Office

505 Van Ness Avenue, Room 2001
San Francisco, CA 94102

PRIVACYNOTICE

This message is to inform you that the Docket Office of the California Public Utilities Commission ("CPUC") intends to file the above-referenced Formal Complaint electronically instead of in paper form as it was submitted.

Please Note: Whether or not your Formal Complaint is filed in paper form or electronically, Formal Complaints filed with the CPUC become a public record and may be posted on the CPUC's website. Therefore, any information you provide in the Formal Complaint, including, but not limited to, your name, address, city, state, zip code, telephone number, E-mail address and the facts of your case may be available on-line for later public viewing.

Having been so advised, the Undersigned hereby consents to the filing of the referenced complaint.

 Deborah Reis

Signature

10/26/2011

Date

Dennis Reis and Deborah Reis

Print your name

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| | | |
|--------------------------------|---|----------------|
| DENNIS REIS and DEBORAH REIS; |) | |
| |) | |
| Complainants; |) | |
| |) | |
| vs. |) | Case No. _____ |
| |) | |
| SONOMA-MARIN AREA RAIL TRANSIT |) | |
| DISTRICT (“SMART”) |) | |
| |) | |
| Defendant. |) | |
| |) | |
| _____ |) | |

I. BACKGROUND

Dennis Reis and Deborah Reis (“Complainants”) are citizens and residents of Sonoma County, California, and are the fee owners of land in Sonoma County that adjoin and underlie a railroad right-of-way under SMART’s control. SMART assumed operating rights over the right-of-way in 2011 pursuant to an Operating and Coordination Agreement entered into with the North Coast Railroad Authority, the prior operator. Complainants’ adjoining parcels of land are described as follows:

Parcel A: 4871 Petaluma Blvd. S., Penngrove, CA 94951 (APN: 019-340-001)

Parcel B: 0 Redwood Highway, Penngrove, CA 94951 (APN: 019-350-006)

SMART’s right-of-way bisects Complainants’ land, and at no point along the intersection of the parcels is there a crossing through SMART’s right-of-way. Furthermore, there is otherwise no connection point over the right-of-way between Complainants’ parcels.

California Public Utility Code § 7537 addresses farm and private crossings. Specifically, it states landowners are entitled to a private crossing if it is “reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands

of the owner.” The statute also states “[t]he owner or operator of the railroad shall construct and at all times maintain such farm or private crossing in a good, safe, and passable condition,” and the California Public Utilities Commission (the “Commission”) has the authority “to determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained” and “fix and assess the cost and expense thereof.”

Obviously, as there is no existing crossing over SMART’s right-of-way connecting Complainants’ parcels, SMART has a statutory duty pursuant to § 7537 to construct and maintain a suitable crossing. On May 3, 2021, Complainants’ counsel informed SMART of the lack of a crossing and requested the situation be remedied. On July 22, 2021, SMART responded without substantive engagement on the issue and instead deflected and pointed a finger at the Commission, stating “the CPUC has exclusive jurisdiction over railroad crossings and the place, manner, and safety of the crossings.” On July 23, Complainants’ counsel spoke with Mr. David Stewart, the Commission engineer responsible for railroad crossings in Sonoma County. Mr. Stewart confirmed SMART’s statutory duty to construct private crossings and suggested further communication with SMART to inform it of the Commission’s position regarding private railroad crossings and to attempt to resolve the issue without involving the Commission. On July 27, 2021, Complainants’ counsel responded to SMART, pointed out its statutory duty to construct and maintain a crossing, made note of the conversation with Mr. Stewart, and again requested compliance. However, as of the date of this complaint’s filing, SMART has yet to respond.

II. RELEVANT ISSUES

Complainants identify the following relevant issues:

- a) Whether a private crossing is either reasonably necessary or convenient for ingress to or egress from Complainants’ Parcel A and/or Parcel B;

- b) Whether a private crossing is either reasonably necessary or convenient to connect Complainants' Parcel A and Parcel B; and
- c) Whether SMART has a statutory duty to construct and maintain a private crossing between Complainants' Parcel A and Parcel B pursuant to § 7537.

III. DESIRED RELIEF

Wherefore, in consideration of the above, Complainants request an order:

- a) Declaring that SMART has an affirmative statutory duty pursuant to Cal. Pub. Util. Code § 7537 to construct a private crossing over its right-of-way and between Complainants' Parcel A and Parcel B;
- b) Affirming the necessity of a private crossing between Complainants' Parcel A and Parcel B;
- c) Determining the place, manner, and condition under which SMART shall construct and maintain the crossing, and the cost and expense thereof; and
- d) Directing SMART to construct and maintain a private crossing at a reasonably convenient location between Complainant's above-described lands at no cost to Complainants.

Respectfully submitted,

/s/ Thomas S. Stewart

Thomas S. Stewart

Elizabeth G. McCulley

Reed W. Ripley

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